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UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

SANG XI,

Petitioner,

v.

KRISTI NOEM, Secretary of the Department of Homeland Security, PAMELA JO BONDI, Attorney General, TODD M. LYONS, Acting Director, Immigration and Customs Enforcement, JESUS ROCHA, Acting Field Office Director, San Diego Field Office, CHRISTOPHER LAROSE, Warden at Otay Mesa Detention Center,

Respondents.

Civil Case No.: 26-cv-175-TWR-SBC

Traverse in Support of Petition for Writ of Habeas Corpus

INTRODUCTION

Having received the government's Return and supporting evidence, this Court should grant Mr. Xi's petition on the basis of either claim. To do so, the Court need only follow recent decisions in this district and around the country.

First, this Court should grant the petition on Claim One because the government has not complied with 8 C.F.R. §§ 241.4, 241.13. For persons like Mr. Xi, those regulations permit re-detention only if ICE (1) "determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future," *id.* § 241.13(i)(2), (2) makes that finding "on account of changed circumstances," *id.*, (3) provides "an initial informal interview promptly," *id.* §§ 241.4(*l*)(1), 241.13(i)(3), and (4) "affords the [person] an opportunity to respond to the reasons for revocation," *id.* Although ICE provided Mr. Xi a Notice of Revocation of his supervised release alleging there were "changed circumstances," it never explained what those "changed circumstances" were. Nor can it, as the government could not remove Mr. Xi in 2002 and 2003 and admits that it has not obtained a travel document since that time. And while the government provided Mr. Xi an informal interview, its failure to explain the "changed circumstances" did not provide him a meaningful opportunity to contest his revocation and detention at that interview.

Second, this Court must grant the petition on Claim Two because the government provides no evidence to satisfy the success element ("a significant likelihood of removal") or timing element ("in the reasonably foreseeable future") of *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). Though Deportation Officer ("DO") Meraz asserts that ICE routinely obtains travel documents for Vietnamese citizens, he does not say (1) what proportion of Vietnamese citizens for whom travel documents are sought actually receive them, or (2) whether Mr. Xi qualifies for removal at all under the 2020 Memorandum of Understanding ("MOU"). (The government does not dispute that he may not be removed under the 2008 treaty.)

Nor does DO Meraz give any indication of how long it takes to get travel documents for pre-1995 Vietnamese citizens—no statistics, no estimations, no anecdotes, no nothing. The government instead relies on ICE's mere efforts to seek travel documents without distinguishing these from the same efforts it made 23 years ago.

This Court should therefore grant the petition—or at least a temporary restraining order ("TRO")—on either ground.

ARGUMENT

I. In light of the government's response, Mr. Xi succeeds on the merits.

With the government's response in hand, this Court need not speculate about whether Mr. Xi may succeed on the merits. Because the government's evidence is plainly insufficient to justify Mr. Xi's detention, his petition should be granted outright, or the Court should at least release him on a TRO pending further briefing.

A. Claim One: ICE did not adhere to the regulations governing re-detention.

First, ICE has not complied with 8 C.F.R. §§ 241.4, 241.13. The government does not deny that these regulations apply to Mr. Xi, that Mr. Xi may challenge them in this habeas case, or that failure to comply with them is grounds for release. *See* Dkt 6 at 8–11. To the contrary, the government appears to agree that Mr. Xi's release was revoked under 8 C.F.R. § 241.4(l)(2)(iii) and 8 C.F.R. § 241.13(i)(2). Dkt. 6 at 8–11. But the government claims that ICE complied with these regulations. *Id.* ICE did not.

Begin with 8 C.F.R. § 241.13(i)(2). That section provides that ICE may "revoke an alien's release under this section and return the alien to custody if, on account of changed circumstances, the Service determines that there is a significant likelihood that the alien may be removed in the reasonably foreseeable future." 8 C.F.R. § 241.13(i)(2) (emphasis added). That "regulation require[s]

(1) an individualized determination (2) by ICE that, (3) based on changed circumstances, (4) removal has become significantly likely in the reasonably foreseeable future." *Kong v. United States*, 62 F.4th 608, 619–20 (1st Cir. 2023).

But the Notice of Revocation of Release simply states that this revocation was "based on a review of your official alien file and a determination that there are changed circumstances in your case." Dkt. 6-1, Exhibit 1. "Simply to say that circumstances had changed or there was a significant likelihood of removal in the foreseeable future is not enough." *Sarail A. v. Bondi*, No. 25-CV-2144, 2025 WL 2533673, at *3 (D. Minn. Sept. 3, 2025). Rather, "Petitioner must be told *what* circumstances had changed or *why* there was now a significant likelihood of removal in order to meaningfully respond to the reasons and submit evidence in opposition, as allowed under § 241.13(i)(3)." *Id.* By "identif[ying] the category—'changed circumstances'—but fail[ing] to notify [Petitioner] of the reason—the circumstances that changed and created a significant likelihood of removal in the reasonably foreseeable future—[ICE] failed to follow the relevant regulation." *Id.*

Nor *have* there been any "changed circumstances." Neither the government's return, nor DO Meraz's declaration, ever explain what has changed since the government's last unsuccessful attempt to remove Mr. Xi in 2003. Dkt. 6 at 8-11; 6-1. Nevertheless, the government argues that "ICE's revived ability to obtain travel documents from the Vietnamese government and to schedule routine removal flights to Vietnam" constitutes "changed circumstances." Dkt. 6 at 9. But the government never provides statistics about how many individuals it *tried* to remove in 2025 compared to the years prior. For instance, if ICE tried to remove 1,000 people in 2025 but only 200 people in the years prior to that, its success rate would be roughly the same. Without this critical context, there is no evidence of any "changed circumstances"—only that the government simply decided to detain Mr. Xi again to try to deport him.

Just as importantly, courts have "demanded an individualized analysis" of why *this* person—Mr. Xi—will likely be removed. *Nguyen*, 2025 WL 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). Because "[t]he government has not provided any evidence of [Vietnam's] eligibility criteria or why it believes *Petitioner* now meets it," the government's evidence is insufficient. *Id.* at *18 (emphasis added). Absent a travel document specific to Mr. Xi—which the government never claims it has received—nothing is different from the last time ICE tried to remove him.

In *Rokhfirooz*, Judge Huie determined the fourth requirement was not met on a record materially indistinguishable from this one. 2025 WL 2646165, at *3 (S.D. Cal. Sept. 15, 2025). There, the government failed to produce "any documented determination, made prior to Petitioner's arrest, that his release should be revoked." *Id.* at *3. The only documentation was "an arrest warrant, issued on DHS Form I-200, merely recit[ing] that there is probable cause to believe that Petitioner is 'removable from the United States,' that is, subject to removal, which would be accurate whether or not Petitioner's release was revoked." *Id.*

That is roughly the same documentation the government has produced here: The government provides no documented, pre-arrest determination that Mr. Xi's release should be revoked. Rather, ICE's documents confirm that his arrest was premised entirely on his status as a removable immigrant, not a determination that release should be revoked because the government had obtained a travel document.

Judge Huie also remarked in *Rokhfirooz* that the government had produced "no record constitut[ing] a determination even after Petitioner's arrest that there is a significant likelihood that Petitioner can be removed in the reasonably foreseeable future." 2025 WL 2646165, at *3. "In connection with defending [that] lawsuit, Respondents prepared and filed a declaration from a Supervisory

Detention and Deportation Officer assigned to the detention center where Petitioner is housed," which stated that "[ICE Enforcement and Removal Operations] determined that there is a significant likelihood of removal and resettlement in a third country in the reasonably foreseeable future and re-detained Petitioner to execute his warrant of removal." *Id.* Judge Huie deemed that post-hoc determination insufficient, because the declarant did not produce underlying documentation showing that any such determination had actually been made—let alone that it had been made pre-arrest. *Id.* The Court therefore "decline[d] to rely on" those statements. *Id.*

Here, the evidence is even weaker. The Meraz Declaration states that ICE twice tried to remove Mr. Xi but was "unable to obtain a travel document to Vietnam." Dkt. 6-2 at ¶ 11, 14. Other than blank assertions, DO Meraz does not explain or provide any evidence showing what has changed for Mr. Xi since then that would somehow make a travel document available. Accordingly, there is "no evidence that DHS has made such a determination as to the revocation of Petitioner's release even after the fact of arrest, up to the present day." *Rokhfirooz*, 2025 WL 2646165, at *4. And "Respondents have not provided any details about why a travel document could not be obtained in the past, nor have they attempted to show why obtaining a travel document is more likely this time around." *Hoac v. Becerra*, No. 2:25-CV-01740-DC-JDP, 2025 WL 1993771, at *4 (E.D. Cal. July 16, 2025). Respondents have announced only their "intent to eventually complete a travel document request for Petitioner," which "does not constitute a changed circumstance." *Id.*

Finally, all of the above goes only to ICE's violations of 8 C.F.R. § 241.13(i)(2). Sections 241.4(l) and 241.13(i)(3) mandate additional procedures: "[B]oth require ICE to provide 'an initial informal interview promptly ... to afford the alien an opportunity to respond to the reasons for revocation.'" *Rombot v. Souza*, 296 F. Supp. 3d 383, 387 (D. Mass. 2017) (quoting 8 C.F.R.

§§ 241.4(*l*)(2), 241.13(i)(3)). Although ICE purportedly provided Mr. Xi an informal interview on the day of his re-arrest, this interview did not allow him to "respond to the reasons for revocation," 8 C.F.R. § 241.13(i)(3), because those reasons were not provided in the Notice of Revocation.

"When the INS published 8 C.F.R. § 241.4 on December 21, 2000, it explained that the regulation was intended to provide aliens procedural due process, stating that § 241.4 'has the procedural mechanisms that . . . courts have sustained against due process challenges.'" *Jimenez v. Cronen*, 317 F. Supp. 3d 626, 641 (D. Mass. 2018) (quoting Detention of Aliens Ordered Removed, 65 FR 80281-01). And "[s]ection 241.13(i) includes provisions modeled on § 241.4(*l*) to govern determinations to take an alien back into custody," Continued Detention of Aliens Subject to Final Orders of Removal, 66 FR 56967-01, meaning that it addresses the same due process concerns as 241.4(*l*). "The procedures in § 241.4" and § 241.13 therefore "are not meant merely to facilitate internal agency housekeeping, but rather afford important and imperative procedural safeguards to detainees." *Jimenez*, 317 F. Supp. 3d at 642. Because the procedures in 8 C.F.R. §§ 241.4, 241.13 are "intended to provide due process to individuals in [Mr. Xi's] position," *Santamaria Orellana v. Baker*, No. CV 25-1788-TDC, 2025 WL 2444087, *6 (D. Md. Aug. 25, 2025), they are enforceable. Thus, this Court should order Mr. Xi released on the basis of Claim One alone.

B. Claim Two: The government has not proved that there is a significant likelihood of removal in the reasonably foreseeable future.

Second, the government provides no evidence that Mr. Xi will likely be removed to Vietnam at all, let alone in the reasonably foreseeable future.

1. The government provides no evidence to support a "significant likelihood of removal" to Vietnam.

As an initial matter, DO Meraz admits that ICE has detained Mr. Xi for approximately six months since his removal order. Dkt. 6-2 at ¶ 10–15. Yet the

government appears to contend that the six-month grace period starts over every time ICE re-detains someone. Dkt. 6 at 5. "Courts . . . broadly agree" that this is not correct. *Diaz-Ortega v. Lund*, 2019 WL 6003485, at *7 n.6 (W.D. La. Oct. 15, 2019), *report and recommendation adopted*, 2019 WL 6037220 (W.D. La. Nov. 13, 2019); *see also Sied v. Nielsen,* No. 17-CV-06785-LB, 2018 WL 1876907, at *6 (N.D. Cal. Apr. 19, 2018) (collecting cases); *Nguyen v. Scott*, No. 2:25-CV-01398, 2025 WL 2419288, at *13 (W.D. Wash. Aug. 21, 2025).

Even a cursory review of § 1231(a)(1)(B) shows this is not true. The statute defines three, specific starting dates for the removal period, none of which involve re-detention. *See Bailey v. Lynch*, No. CV 16-2600 (JLL), 2016 WL 5791407, at *2 (D.N.J. Oct. 3, 2016) (explaining this). The six-month grace period has therefore ended, and so—contrary to the government's claims—Mr. Xi need not rebut the "presumptively reasonable period of detention." Dkt. 6 at 5.

Because the six-month grace period has passed, the burden shifts to the government to prove that there is a "significant likelihood of removal in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. That standard has a success element ("significant likelihood of removal") and a timing element ("in the reasonably foreseeable future"). The government meets neither.

As an initial matter, the government has not shown that Mr. Xi's removal to Vietnam is "significant[ly] like[ly]." *Zadvydas*, 533 U.S. at 701.

First, as previously explained, DO Meraz's assertion that ICE routinely obtains travel documents for Vietnamese citizens does not show that a high *proportion* of Vietnamese citizens are successfully removed when ICE seeks travel documents. "[I]f the total number of requests that were made to Vietnam was disclosed, [this Court] might be able to gauge how likely it is that Petitioner would be removed to Vietnam. If DHS submitted 350 requests and Vietnam issued travel documents for 328 individuals, Respondents may very well have shown that removal is significantly likely in the reasonably foreseeable future. On

the other hand, if DHS submitted 3,500 requests and only 328 individuals received travel documents, Respondents would not be able to meet their burden." *Nguyen*, 2025 WL 1725791, at *4; *accord Hoac*, 2025 WL 1993771, at *5. DO Meraz provides no ratio of requests to travels documents issued, precluding this kind of analysis.

Just as importantly, courts have "demanded an individualized analysis" of why *this* person—Mr. Xi—will likely be removed. *Nguyen*, 2025 WL 2419288, at *17 (citing *Nguyen*, 2025 WL 1725791, at *4). This Court cannot know if Mr. Xi qualifies at all under the MOU, because (1) the MOU applies only to persons meeting certain criteria, but (2) the government has never disclosed in full what those criteria are. *Id.* at *6. And even for those who qualify, the MOU provides only that Vietnam has "discretion whether to issue a travel document," which it exercises "on a case-by-case basis." *Hoac*, 2025 WL 1993771, at *5. By itself, then, "the MOU has repeatedly been deemed insufficient to show a significant likelihood of remova[l] in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *17. Because "[t]he government has not provided any evidence of Vietnam's eligibility criteria or why it believes Petitioner now meets it," the government's evidence is insufficient. *Id.* at *18.

Second, good faith efforts to secure a travel document do not themselves satisfy *Zadvydas*. In fact, the petitioner in *Zadvydas* appealed a "Fifth Circuit h[olding] [that] [the petitioner's] continued detention [was] lawful as long as good faith efforts to effectuate deportation continue and [the petitioner] failed to show that deportation will prove impossible." 533 U.S. at 702 (cleaned up). The Supreme Court reversed, finding that the Fifth Circuit's good-faith-efforts standard "demand[ed] more than our reading of the statute can bear." *Id.*

Thus, "under *Zadvydas*, the reasonableness of Petitioner's detention does not turn on the degree of the government's good faith efforts. Indeed, the *Zadvydas* court explicitly rejected such a standard. Rather, the reasonableness of

Petitioner's detention turns on whether and to what extent the government's efforts are likely to bear fruit." *Hassoun v. Sessions*, No. 18-CV-586-FPG, 2019 WL 78984, at *5 (W.D.N.Y. Jan. 2, 2019). Accordingly, "the Government is required to demonstrate the likelihood of not only the *existence* of untapped possibilities, but also of a probability of success in such possibilities." *Elashi v. Sabol*, 714 F. Supp. 2d 502, 506 (M.D. Pa. 2010).

Here, then, "[w]hile the respondent asserts that [Mr. Xi's] travel document requests with [the Vietnamese] Consulate[]" will be lodged, "this is insufficient. It is merely an assertion of good-faith efforts to secure removal; it does not make removal likely in the reasonably foreseeable future." *Gilali v. Warden of McHenry Cnty.*, No. 19-CV-837, 2019 WL 5191251, at *5 (E.D. Wis. Oct. 15, 2019). Many courts have agreed that requesting travel documents does not itself make removal reasonably likely. *See, e.g.*, *Andreasyan v. Gonzales*, 446 F. Supp. 2d 1186, 1189 (W.D. Wash. 2006) (holding evidence that the petitioner's case was "still under review and pending a decision" did not meet respondents' burden); *Islam v. Kane*, No. CV-11-515-PHX-PGR, 2011 WL 4374226, at *3 (D. Ariz. Aug. 30, 2011), *report and recommendation adopted*, 2011 WL 4374205 (D. Ariz. Sept. 20, 2011) ("Repeated statements from the Bangladesh Consulate that the travel document request is pending does not provide any insight as to when, or if, that request will be fulfilled."); *Khader v. Holder*, 843 F. Supp. 2d 1202, 1208 (N.D. Ala. 2011) (granting petition despite pending travel document request, where "[t]he government offers nothing to suggest when an answer might be forthcoming or why there is reason to believe that he will not be denied travel documents"); *Mohamed v. Ashcroft*, No. C01-1747P, 2002 WL 32620339, at *1 (W.D. Wash. Apr. 15, 2002) (granting petition despite pending travel document request).

2. The government provides no evidence to support that any such removal will occur "in the reasonably foreseeable future."

Additionally, even if ICE will eventually remove Mr. Xi, the government provides zero evidence that removal will happen "in the reasonably foreseeable future." *Zadvydas*, 533 U.S. at 701. DO Meraz provides no timetable for how long travel document requests like his typically take—no statistics, no estimations, no anecdotes, no nothing.

That is fatal. "[D]etention may not be justified on the basis that removal to a particular country is likely *at some point* in the future; *Zadvydas* permits continued detention only insofar as removal is likely in the *reasonably foreseeable* future." *Hassoun*, 2019 WL 78984, at *6. "The government's active efforts to obtain travel documents from the Embassy are not enough to demonstrate a likelihood of removal in the reasonably foreseeable future where the record before the Court contains no information to suggest a timeline on which such documents will actually be issued." *Rual v. Barr*, No. 6:20-CV-06215 EAW, 2020 WL 3972319, at *4 (W.D.N.Y. July 14, 2020). "[I]f DHS has no idea of when it might reasonably expect [Mr. Xi] to be repatriated, this Court certainly cannot conclude that his removal is likely to occur—or even that it *might* occur—in the reasonably foreseeable future." *Singh v. Whitaker*, 362 F. Supp. 3d 93, 102 (W.D.N.Y. 2019).

Courts have routinely granted habeas petitions where, as here, the government does not establish *Zadvydas*'s timing element. *See, e.g.*, *Balza v. Barr*, No. 6:20-CV-00866, 2020 WL 6143643, at *5 (W.D. La. Sept. 17, 2020), *report and recommendation adopted,* No. 6:20-CV-00866, 2020 WL 6064881 (W.D. La. Oct. 14, 2020) ("[A] theoretical possibility of eventually being removed does not satisfy the government's burden[.]"); *Eugene v. Holder*, No. 408CV346-RH WCS, 2009 WL 931155, at *4 (N.D. Fla. Apr. 2, 2009) ("While Respondents contend Petitioner *could* be removed to Haiti, it has not been shown

that it is significantly likely that Petitioner *will* be removed in the *reasonably foreseeable* future."); *Abdel-Muhti v. Ashcroft*, 314 F. Supp. 2d 418, 426 (M.D. Pa. 2004) (granting petition because even if "Petitioner's removal will ultimately be effected . . . the Government has not rebutted the presumption that removal is not likely to occur in the reasonably foreseeable future"); *Seretse-Khama v. Ashcroft*, 215 F. Supp. 2d 37, 50 (D.D.C. 2002) (granting petition where the government had not provided any "evidence . . . that travel documents will be issued in a matter of days or weeks or even months").

In sum, then, there could be "some possibility that Vietnam will accept Petitioner at some point. But that is not the same as a significant likelihood that he will be accepted in the reasonably foreseeable future." *Nguyen*, 2025 WL 2419288, at *16. Mr. Xi therefore succeeds under *Zadvydas*, too.

CONCLUSION

For all these reasons, this Court should grant the petition, or at least enter a temporary restraining order and injunction.

Respectfully submitted,

Dated: January 27, 2026

s/ Kara Hartzler

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